

MOTION OF THE COUNCIL OF ALLEGHENY COUNTY

MOTION EXPRESSING THE APPROVAL OF COUNCIL OF ALLEGHENY COUNTY
for rules and regulations promulgated by the Allegheny County Treasurer to govern the collection of Allegheny County's Rental Vehicle Tax, pursuant to the terms of Ordinance 55-07.

WHEREAS, under the terms of Act 44 of 2007, the General Assembly and Governor have empowered counties of the second class to impose a tax on the rental of certain motor vehicles within the county in order to generate revenue to support transit; and

WHEREAS, Allegheny County has implemented such a tax under the terms of Ordinance 55-07, which created a new Article 808.B in the Administrative Code of Allegheny County governing the Rental Vehicle Tax; and

WHEREAS, in addition to the requirements of the new Article 808.B, §5-808.B.05.B establishes that the Allegheny County Treasurer, acting as the County's Tax Collector, is empowered to prescribe, adopt, promulgate and enforce rules and regulations to administer and/or enforce the provisions of Article 808.B.; and

WHEREAS, §5-828.B.05.B further requires that rules or regulations created or amended pursuant to that section must be approved by County Council; and

WHEREAS, the Allegheny County Treasurer has created a set of rules and regulations pursuant to §5-808.B.05.B., which are attached to this Motion; and

WHEREAS, it is the desire of Council to grant approval to the attached rules and regulations;

NOW, THEREFORE, IT IS MOVED that the Council hereby approves the attached Allegheny County Rental Vehicle Tax Rules and Regulations, as promulgated by the Treasurer. In accordance with the terms of §5-808.B.05.B of the Administrative Code of Allegheny County, any amendment to the attached rules shall require a separate approval by Council.

PRIMARY SPONSOR: ALLEGHENY COUNTY TREASURER WEINSTEIN

CO-SPONSORS:

In Council January 15 2008. **Read and Approved.**

Rich Fitzgerald
Rich Fitzgerald
President of Council

Attest: John Mascio
John Mascio
Chief Clerk of Council

ALLEGHENY COUNTY RENTAL VEHICLE TAX RULES AND REGULATIONS

TABLE OF CONTENTS

PREFACE	1
SEC. 101. DEFINITIONS	3
SEC. 201. IMPOSITION OF TAX.....	4
SEC. 301. COLLECTION, RETURNS AND PAYMENT OF TAX	4
SEC. 401. EXAMINATION OF VEHICLE RENTAL COMPANY'S BOOKS AND RECORDS	6
SEC. 501. PENALTIES AND ENFORCEMENT.....	6
SEC. 601. REVIEW AND APPEALS.....	8
SEC. 701. POWERS AND DUTIES OF THE TAX COLLECTOR.....	9
SEC. 801. TAXPAYER INFORMATION/ASSISTANCE.....	10
SEC. 901. EXAMPLES	10

PREFACE

On December 4, 2007, Allegheny County Council passed Ordinance No. 55-07-OR/3546-07 amending and supplementing the Allegheny County Code of Ordinances, Division 1, entitled "Administrative Code," and creating Article 808.B, "Rental Vehicle Taxation," in order to provide for the imposition of a County Tax on the Rental of Rental Vehicles within the County. The Ordinance was approved by the Chief Executive of Allegheny County on December 10, 2007. The Ordinance and these Rules and Regulations take effect January 1, 2008.

ALLEGHENY COUNTY RENTAL VEHICLE TAX

Section 101. Definitions.

The following words and phrases when used in these Rules and Regulations shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. *Controller*: The Allegheny County Controller.
- B. *Costs of Collection*: The Tax Collector's costs of collection shall include any and all costs incurred by the Tax Collector, Controller or their designee(s) to collect the Tax due under the Ordinance. The Costs of Collection shall include all statutorily permitted collection costs, including, but not necessarily limited to, any out of pocket costs, court costs and costs for printing and postage.
- C. *County*: Allegheny County.
- D. *Day*: Any twenty-four (24) hour period, or any part thereof.
- D. *Motor Vehicle*: A self-propelled device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except tractors, power shovels, road machinery, agricultural machinery and vehicles which move upon or are guided by a track or trolley.
- E. *Ordinance*: Ordinance No. 55-07-OR/3546-07, authorizing the Rental Vehicle Tax.
- F. *Person*: Any individual, limited partnership, partnership, limited liability company, corporation or other entity.
- G. *Rent(s)(al)(ed)(ing)*: A written or oral contract for the use of a Rental Vehicle.
- H. *Rental Vehicle*: A private passenger motor vehicle designed to transport fifteen or fewer passengers, or a truck, trailer or semitrailer used in the transportation of property other than commercial freight, that is Rented without a driver, is part of a fleet of five (5) or more Rental Vehicles that are used for that purpose and owned or leased by the same Person or entity, and is Rented for a period of twenty-nine (29) or fewer consecutive days.
- I. *Tax*: The County Rental Vehicle Tax, plus all applicable penalties, interest and costs authorized by the Ordinance and other applicable law.
- J. *Tax Collector*: The Allegheny County Treasurer.
- K. *Tax Year*: The year commencing January 1 of the calendar year and ending December 31 of the calendar year.

- L. *Vehicle Rental Company:* Any Person engaged in the business of Renting Motor Vehicles in the Commonwealth of Pennsylvania and which has a fleet of at least five (5) Rental Vehicles.

Section 201. Imposition of Tax.

- A. There is hereby imposed an excise tax on the Rental of Rental Vehicles in the County during Tax Year 2008, or any part thereof, and for each Tax Year thereafter.
- B. The Tax shall be collected by a Vehicle Rental Company at the time a Rental Vehicle is Rented by that Vehicle Rental Company, and shall be remitted by the Vehicle Rental Company to the County in accordance with the requirements of the Ordinance, these Rules and Regulations, or any amendments to these Rules and Regulations.
- C. The rate of Tax shall be two dollars (\$2.00) per day, or any part of a day, on which a Rental Vehicle is Rented within Allegheny County.

Section 301. Collection, Returns and Payment of the Tax.

- A. Every Vehicle Rental Company shall collect the Tax as agent for the County from the Person at the time a Rental Vehicle is Rented and shall remit the Tax to the Tax Collector in the manner set forth in these Rules and Regulations.
- B. Any Vehicle Rental Company required under the Ordinance to collect the Tax from a Person, who shall fail to collect and remit the proper amount of Tax, shall be liable for the full amount of the Tax due. In addition, the Vehicle Rental Company shall be subject to penalties, interest and Costs of Collection due, if any, and to any and all additional remedies permitted by these Rules and Regulations, the Ordinance, by any applicable statute, or as may be otherwise permitted at law or in equity.
- C. *Returns and Payments of the Tax.*
 - (1) Every Vehicle Rental Company within the County required to collect and remit the Tax shall file with the Tax Collector a monthly return calculating the total Tax due. As a courtesy, the Tax Collector may mail the monthly return form(s) to each Vehicle Rental Company. Regardless, the Tax Collector shall make the monthly return form(s) available to each Vehicle Rental Company, however, it is the Vehicle Rental Company's responsibility to obtain the monthly return forms, complete them and pay the Tax due. The monthly return form is available at the Tax Collector's Office, Allegheny County Courthouse,

Room 217, 436 Grant Street, Pittsburgh, PA 15219, or electronically through the Allegheny County website, www.allegenycounty.us/treasure. The monthly return form requires each Vehicle Rental Company to provide, in writing, specific information, including:

- Vehicle Rental Company's name and address;
- Vehicle Rental Company's federal employee identification number;
- Total Rentals of Rental Vehicles and total Rental Days for the month;
- Total Tax due.

(2) Payment of the Tax due shall be remitted to the Tax Collector together with a completed monthly return form. **A completed monthly return form must be submitted even if no Tax is due.**

(3) Each monthly return form is due for each Vehicle Rental Company within fifteen (15) days after the last day of the prior month for which the monthly return is being filed. For example, each Vehicle Rental Company's first monthly return shall be due on or before February 15, 2008. The amount of Tax paid shall be based on the total Days the Vehicle Rental Company Rented any and all Rental Vehicles for the period January 1, 2008 – January 31, 2008.

(4) **It is the Vehicle Rental Company's duty to timely file each required monthly return form together with any Tax due. The failure to receive or obtain the monthly return form shall not relieve any Vehicle Rental Company from the obligation to timely file the monthly return and pay the required Tax due.**

(5) A check returned to the Tax Collector due to insufficient funds will incur an NSF charge in an amount to be determined by the Tax Collector. The Tax Collector shall publish the amount of the NSF charge on the Tax Collector's website and post it in the Office of the Tax Collector.

D. Upon receipt of each monthly return, the Tax Collector shall verify the Tax calculation and the Tax paid. If the Vehicle Rental Company has miscalculated the amount of Tax due, the Vehicle Rental Company may receive a notice of the deficiency and shall be responsible for the deficiency and/or filing an amended return. Even if no notice of deficiency is received, it is the duty of the Vehicle Rental Company to correct any miscalculations on any filed monthly return and immediately pay any additional Tax due plus all applicable penalty and interest. If the Vehicle Rental Company has overpaid, the Vehicle Rental Company shall receive a credit towards future Tax due.

Section 401. Examination of Vehicle Rental Company's Books and Records.

- A. The Tax Collector, Controller, and/or their designee(s), are hereby authorized to examine the books, papers, and records of any Vehicle Rental Company or any Person whom the Tax Collector, Controller, and/or their designee(s) reasonably believes to be a Vehicle Rental Company, in order to verify the accuracy of any monthly return, or if no monthly return was filed, to ascertain the Tax due. Upon written request of the Tax Collector, Controller, and/or their designee(s), every Vehicle Rental Company is hereby directed and required to give to the Tax Collector, Controller, and/or their designee(s), the means, facilities and opportunities for such examinations.
- B. As a courtesy, no audit shall occur without prior written or oral notice to the Vehicle Rental Company. All audits shall occur at a mutually agreeable time for the Tax Collector, Controller and/or their designee(s) and the Vehicle Rental Company. In the event that a mutually agreeable time cannot be arranged, the Tax Collector, Controller, and/or their designee(s) shall provide advanced written or oral notice of the date, time, and place of the audit.

Section 501. Penalties and Enforcement.

In addition to any other remedy provided at law or in equity:

- A. Any Vehicle Rental Company who willfully fails or refuses to appear before the Tax Collector, Controller, and/or their designee(s), in person with his or her books, records or accounts for examination when required by the Tax Collector, Controller, and/or their designee(s), to do so, or who willfully fails to permit inspection of the books, records or accounts in his or her custody or control when required by the Tax Collector, Controller, and/or their designee(s); or who willfully makes any false or untrue statement on his or her monthly return; or who willfully fails or refuses to file a monthly return required by the Ordinance and these Rules and Regulations or to collect and pay over to the Tax Collector any Tax imposed herein shall be liable to pay a fine of three hundred dollars (\$300) for any first violation.
- B. Any Vehicle Rental Company who, on more than one occasion, fails to keep or make any record, monthly return or report required, or keeps or makes any false or fraudulent record, monthly return or report, or who shall refuse the Tax Collector, Controller, and/or their designee(s), to examine his or her books and records in order to verify the accuracy of

his or her payment of the Tax, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than three hundred dollars (\$300), or imprisonment for not more than ninety (90) days, or both. A Vehicle Rental Company shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

- C. Any Vehicle Rental Company who fails to pay the Tax collected on or before the last date prescribed for payment shall be liable to pay a penalty of one percent (1%) per month or fraction thereof on such Tax from the time the Tax became due and interest at the rate of one-half of one percent ($\frac{1}{2}$ of 1%) per month or fraction thereof. The penalty and interest provided for in the Ordinance and these Rules and Regulations shall be added to the Tax assessed and collected at the same time, in the same manner, and as a part of the Tax. If the Tax Collector determines that any Vehicle Rental Company owes interest and penalty, the Vehicle Rental Company shall be notified by the Tax Collector and shall be responsible for paying the penalty and interest on the Vehicle Rental Company's next monthly return form.
- D. The penalty and interest on any unpaid Tax imposed by the Ordinance shall be paid to the Tax Collector. Partial payments made shall first be applied to Costs of Collection, if any, interest and penalty, if any, in that order, before any application to the original Tax due.
- E. It shall be the duty of the Tax Collector to sue for the recovery of any Tax not paid when due. Any suit to recover any Tax, together with interest, penalty, and the Costs of Collection authorized by any applicable law, from any Vehicle Rental Company, shall be initiated within six (6) years after such Tax is due or within six (6) years after a monthly return has been filed, whichever date is later; but this limitation shall not apply:
 - (1) Where no monthly return was filed by the Vehicle Rental Company although a monthly return was required to be filed by the Vehicle Rental Company, there shall be no limitation.
 - (2) Where an examination of the monthly return filed by the Vehicle Rental Company, or of other evidence relating to such monthly return in the possession of the Tax Collector, reveals a fraudulent evasion of any Tax, there shall be no limitation.
- F. In the case of substantial understatement of Tax liability of twenty-five percent (25%) or more and no fraud, suit shall be initiated within six (6) years after the monthly return has been filed.

- G. Where any Vehicle Rental Company has deducted Taxes and has failed to pay the amounts so deducted to the Tax Collector, or where any Vehicle Rental Company has willfully failed, refused or omitted to make the deductions required, there shall be no limitation.
- H. This section shall not be construed to limit the County from recovering delinquent Taxes by any other means provided by applicable statute.
- I. Vehicle Rental Companies must retain all books, papers and records related to the Tax for a period of at least six (6) years, or longer in cases where the limitations period does not apply, as set forth in section 501(e).
- J. Where suit is brought for the recovery of any Tax, the Vehicle Rental Company shall be liable for, and it shall be the duty of the Tax Collector, or its designee(s), to collect, in addition to the Tax assessed against such Vehicle Rental Company, the Costs of such Collection, as defined above, and the interest and penalties provided by law.
- K. Any suit filed may relate to one or more monthly returns.
- L. The Tax Collector may sue for recovery of an erroneous refund provided such suit is initiated two (2) years after making such refund, except that the suit may be brought within five (5) years if it appears that any part of the refund was induced by fraud or misrepresentation of material fact.

Section 601. Review and Appeals.

- A. If the Tax Collector, or its designee(s), makes a determination regarding the amount of Tax due from a Vehicle Rental Company, that differs from the amount of Tax paid by the Vehicle Rental Company, the Tax Collector, or its designee(s), shall give written notice of the Tax due by serving it personally or by mailing it via the United States Postal Service, first class mail, postage prepaid, addressed to the Vehicle Rental Company at its last known place of business. Service shall be deemed accomplished the first business day following the date on which written notice was mailed, or on the date of personal service.
- B. Such Vehicle Rental Company may, within ten (10) days after service of the notice of the Tax due, make application in writing to the Tax Collector for a hearing on the Tax due. If application for a hearing is not made within the time prescribed, the Tax, interest and penalties, if any, determined by the Tax Collector, or its designee(s), shall become final and conclusive and immediately due and payable.

- C. If an application for a hearing is made, the Tax Collector shall schedule a hearing and give the Vehicle Rental Company no less than five (5) days advance written notice of the date, time and place of the hearing. At the time of the hearing, the Vehicle Rental Company may appear and offer evidence to show cause why the amount of Tax due, as determined by the Tax Collector, should not be fixed for such Tax, interest and penalties.
- D. After such hearing, the Tax Collector shall determine the proper Tax to be remitted and shall thereafter give, via The United States Postal Service, by both certified mail and first class mail, written notice to the Vehicle Rental Company of such determination and the amount of such Tax, interest and penalties due. The amount determined to be due shall be payable within thirty (30) days of the "date of determination," unless an appeal is taken as provided in subsection (E), below. The "date of determination" shall be the first business day following the date on which written notice was mailed.
- E. Any Vehicle Rental Company aggrieved by any decision of the Tax Collector with respect to the amount of such Tax, interest and penalty due, if any, may appeal to the Court of Common Pleas of Allegheny County by the filing of a Notice of Appeal within thirty (30) days of the date of determination of the Tax due.

Section 701. Powers and Duties of the Tax Collector.

- A. It shall be the duty of the Tax Collector to collect and receive the Tax, interest, penalty and Costs of Collection imposed by applicable law. It shall also be the Tax Collector's duty to keep a record showing the amount of Tax received from each Vehicle Rental Company or Person paying the Tax and the date of such receipt.
- B. The Tax Collector shall amend these Rules and Regulations from time to time and as may be necessary. All Rules and Regulations adopted or amended pursuant to this section shall be effective upon approval by Allegheny County Council. A copy of such Rules and Regulations currently in force shall be available for public inspection.
- C. Any information gained by the Tax Collector, Controller, or their designee(s), as a result of any monthly returns, investigations, hearings or verifications required or authorized by these Rules and Regulations or other applicable law, shall be confidential, except for official purposes and except in accordance with a proper judicial order, or as otherwise provided by law.

- D. Revenue derived from the imposition of the Tax authorized herein shall be deposited into a restricted account of the County maintained by the Tax Collector.
- E. The Tax Collector may publicly disclose the names of any and all Vehicle Rental Companies that have paid or who have failed to pay the Tax due under the Ordinance and these Rules and Regulations. The list may also include any Vehicle Rental Company who has failed to file any applicable monthly return.

Section 801. Taxpayer Information/Assistance.

- A. The Tax Collector may be contacted between the hours of 8:30 am and 4:30 pm at 877-TX-DRINK (877-893-7465) or in person at the Office of the Tax Collector, Allegheny County Courthouse, 436 Grant Street, Room 217, Pittsburgh, PA 15219. Written correspondence may also be mailed to the Office of the Tax Collector.
- B. Any Tax due may be paid in person at the Office of the Tax Collector. Monthly return forms may also be picked up at the Office of the Tax Collector.
- C. The most current version of these Rules and Regulations, the monthly return forms and other information related to the Ordinance are available at www.allegenycounty.us/treasure.

Section 901. Examples.

The following are examples of transactions that **are subject to the Tax**¹:

Example 1:

Mr. Jones Rents a Rental Vehicle from a Vehicle Rental Company for 20 days. This Rental is subject to the Tax and the Vehicle Rental Company must collect \$40 from Mr. Jones (\$2 x 20 days).

¹ The Examples contained in these Rules and Regulations are for informational purposes only. They are included herein to assist Vendors in understanding and calculating the Tax. However, the Examples are not exhaustive and there may be situations in addition to these Examples when the Tax may be due. It is the duty of each Vehicle Rental Company to determine if the Tax is due. Vehicle Rental Companies may contact the Office of the Tax Collector if they have any questions regarding application of the Tax.

Example 2:

Mr. Jones Rents a Rental Vehicle from a Vehicle Rental Company under contract for 10 days. This Rental is subject to the Tax and the Vehicle Rental Company must collect \$20 from Mr. Jones ($\2×10 days). After the 10 days expires, Mr. Jones continues to use the Rental Vehicle for 20 more days. The original contract is not amended, rather, Mr. Jones is treated as entering into a new day-to-day contract for each extra day he keeps the Rental Vehicle. Therefore, Mr. Jones must also pay the \$40 Tax ($\2×20) for each additional day he keeps the Rental Vehicle. His total Tax will be \$60.

Example 3:

Mr. Jones Rents a Rental Vehicle for 10 days from ABC, Inc. which owns 2 vehicles, leases 7 others and Rents all 9 to the public. Because ABC, Inc. has 5 or more Rental Vehicles available for Rental, it is deemed to be operating a Vehicle Rental Company and the Rental payment are subject to the Tax. The Vehicle Rental Company must collect \$20 Tax from Mr. Jones ($\2×10).

Example 4:

Mr. Jones Rents a truck (a Rental Vehicle) from a Vehicle Rental Company to transport a living room set to his hunting camp. The Rental payments are subject to the Tax as the living room set does not qualify as commercial freight.

The following are examples of transactions that **are not subject to the tax**:

Example 5:

Mr. Jones Rents a Rental Vehicle from a Vehicle Rental Company for 25 days. After using the car for 25 days, Mr. Jones likes the car and wishes to use the car for a longer period of time. Mr. Jones returns the car, terminates the Rental contract and enters into a lease agreement under which he leases the same car for 1 full year. The first transaction is governed by the original contract and the Rental payment **is subject to the tax**. Because the second transaction is a lease agreement for a period of more than twenty-nine (29) days, the lease payments **are not subject to the Tax**. The Vehicle Rental Company must collect \$50 Tax from Mr. Jones ($\2×25).

Example 6:

Mr. Jones Rents a Rental Vehicle for 20 days from DEF, Co. who has only 3 Rental Vehicles available for Rental. Because DEF, Co. has fewer than 5 Rental Vehicles available for Rental, it is not deemed to operate a Vehicle Rental Company and the Rental payment **is not subject to the Tax**.

Example 7:

Mr. Jones, who is engaged in a manufacturing business, Rents a truck used exclusively to deliver his own manufactured products to his customers. The Rental payments **are not subject to the Tax** as his products qualify as commercial freight.

Mascio, John

From: Mascio, John
Sent: Wednesday, January 23, 2008 3:42 PM
To: Weinstein, John
Subject: Bill Nos. 3697-08 & 3698-08 - Motions of Council
Attachments: 3697-08.PDF; 3698-08.PDF

Dear Treasurer Weinstein,

This is to inform you that at the Regular Meeting of Council held on January 15, 2008, Council passed the following Motions:

Bill No. 3697-08 - Motion expressing the approval of the Council of Allegheny County for rules and regulations promulgated by the Allegheny County Treasurer to govern the collection of Allegheny County's Alcoholic Drink Tax, pursuant to the terms of Ordinance 54-07.

Bill No. 3698-08 - MOTION EXPRESSING THE APPROVAL OF COUNCIL OF ALLEGHENY COUNTY for rules and regulations promulgated by the Allegheny County Treasurer to govern the collection of Allegheny County's Rental Vehicle Tax, pursuant to the terms of Ordinance 55-07.

John Mascio
Chief Clerk